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SIPDIS

SENSITIVE

E.O. 12958: N/A

TAGS: CASC EFIN EINV KIDE OPIC PGOV BO

SUBJECT: BELARUS: 2006 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION CLAIMS

REFS: (A) STATE 60294, (B) 05 Minsk 582

Sensitive but Unclassified; Protect Accordingly

¶1. (SBU) Post submits its annual contribution for the 2006 Report on Investment Disputes and Expropriation Claims. During the year the Belarus Government continued with its policy of fundraising through confiscation of transiting goods, although this process appears to be declining. The State Customs Committee reported 22 American owned cargos transiting through Belarus were seized in the first nine months of 2005, down from 133 in all of 2004. The 2006 state budget also anticipated only USD 42 million in revenue from border confiscations, down from USD 84 million in the 2005 budget. That number, however, should be viewed with caution as most revenue from confiscations appears to go to off-budget governmental funds. Only a few of these cases were brought to Post's attention by the affected company.

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¶2. (SBU) The United States Government is aware of seven (7) unresolved claims of United States persons that may be outstanding against the Government of Belarus (GOB). Under the second heading are provided, as last year, six (6) other incidents in which property owned by the US Government was seized and expropriated.

a. Claimant A

b. July 2005

c. Claimant A is a US corporation which had a hydraulic pumping unit worth \$23,552 seized by Belarusian Customs. The claimant was shipping the unit from Poland to Russia. Polish Customs had added the cost of transport to the unit's price on the shipping invoice, but provided a notarized statement to this effect. Nonetheless, Belarusian Customs claimed this represented a discrepancy in the paperwork and referred the case to court for seizure by the Belarusian Government. Knowing the Belarusian Government's daily practice of confiscating transiting goods and reselling them for profit, the US Embassy sent letters to and called the Ministry of Foreign Affairs, the Ministry of Justice, and Customs. The US Embassy also arranged for additional supporting documents to be provided by the nearest Polish Consulate. The hydraulic unit was released back to the American company in October. The Belarusian Government did not provide compensation for legal costs or losses the American corporation incurred over this delay.

a. Claimant B

b. August 2005

c. Claimant B is a US corporation which had \$8,200 worth of sheetrock and other construction materials seized by Belarusian Customs. Customs claimed the US corporation had gone out of business in 2001, and used this as legal grounds to formally confiscate this cargo. The Belarusian Government did not provide compensation for this confiscation.

a. Claimant C

b. February 2005

c. Claimant C is a US corporation which owns 9.35% of the Kommunarka candy company. In 2000, the Belarusian Government used a Golden Share mechanism to take full control of Kommunarka for five years. The state used this control to grant itself majority ownership over the company. In February 2005 the Belarusian State Food Industries Concern (Belgospischeprom) extended its Golden Share control over the company for another five years. The Belarusian Government has not provided any compensation for this action.

a. Claimant D

b. January 2004

c. Claimant D is a US corporation which had a shipment of second-hand clothing evaluated at \$13,600 seized by Belarusian Customs. The Claimant was shipping the clothes from the U.S. to Ukraine through Lithuania and Belarus. The

Belarusian government seized the shipment because it alleged the US corporation was not registered to do business at the time of the shipment, even though the US company provided information from the State of New York to prove they were registered. The US Embassy provided the company with a letter of support and the US Ambassador raised this case, along with several others, in meetings with the Foreign Minister. The Belarusian government has not compensated the US corporation for the seizure.

a. Claimant E

b. January 2004

c. Claimant E is a US corporation which had a shipment of 38 tons of frozen fish seized by Belarusian Customs. The Claimant was shipping the fish from the U.S. to Ukraine and Moldova through Lithuania and Belarus. The Belarusian government seized the shipment because it alleged the US corporation was not registered to do business at the time of the shipment, even though the US company provided apostillized information from the State of Oregon to prove they were registered. The US Embassy provided the company with a letter of support and the US Ambassador raised this case, along with several others, in meetings with the Foreign Minister. The Belarusian government has not compensated the US corporation for the seizure.

a. Claimant F

b. August 2002

c. Claimant F is a US corporation that has six restaurant outlets in Belarus. In 2002 Minsk City authorities physically blocked access to Claimant F's most popular branch, ostensibly as a safety precaution while the city performed construction work at a nearby building. However, during the same time frame the Belarusian government made a number of public statements hostile towards Claimant F, including the Ministry of Health declaring Claimant F's food was dangerous to Belarusian citizens. Claimant F's employees are allowed access to the closed outlet, but are

not allowed to conduct business at the site. The city has promised for the past several years to reopen the restaurant, but has taken no positive action. Talks have been underway for compensation for several years, with no progress. Claimant F has plans to expand in Belarus, but not until this outlet is returned to their control.

a. Claimant G

b. 1995

c. Claimant G is a US company that provided equipment and services to Belarus for a demilitarization project. Claimant G alleges that Belarus effectively changed the agreed terms of the contract to exclude the company from ongoing participation without compensating the Claimant for the services and equipment it had provided. After failure of direct negotiations with Belarus, Claimant G filed an expropriation claim with OPIC.

On March 31, 1997, OPIC compensated Claimant G in the amount of \$5.9 million for expropriation of its investment, a joint venture in Belarus, and the Claimant has assigned its claim against the GOB to OPIC. Negotiations were suspended by OPIC when the MFA formally requested in March 1999 that OPIC cancel or withdraw its expropriation claim determination in favor of Claimant G. OPIC has since informed Belarus that it is willing to resume negotiations, assuming some common ground can be found.

a. Claimant H

b. December 2004 to June 2005

c. Claimant H is a US company that owns a printing plant in Belarus. In the first five months of 2005 the company paid over \$300,000 in arbitrary fines to the government. After fourteen years of successful operations, the company was first fined in December 2004 when they applied to renew their import/export license eleven days before the previous one expired. Customs responded the application must be filed fifteen days in advance, and levied a fine of approximately \$200,000 (the amount of the fine varied by day and by interlocutor). Customs also denied the license. The claimant paid the fine and filed to receive this license eight more times. Every time the application was rejected

by Customs and more fines levied. Many of the fines were suspicious; for instance the company successfully argued that one \$15,000 fine was illegal, only to have Customs agree and immediately fine them \$15,000 for something else. Some of these fines were also raised without explanation; when the company attempted to pay a \$27,000 fine, Customs replied the fine was now \$39,000. The Embassy protested these fines to the MFA and Belarusian Customs, and the State Department raised them with the Belarusian Embassy in Washington. The company finally received its new license, and was able to renew the license in 2006 without incident.

#### US Government Property

a. Claimant I (US Government)

b. July 12, 2001

c. Claimant I provided US Government-owned computer and printing equipment to the Volny Gorod Newspaper in Krichev. On July 12, 2001, the Police confiscated the equipment, valued at \$5,783. US Embassy officials observed the court trial and State Department Spokesman Richard Boucher issued a statement concerning the case on August 3, 2001. Post has reached no resolution with Belarus on this issue.

a. Claimant J (US Government)

b. August 2001

c. Claimant J provided US Government-owned computer and printing equipment to the Philon Kmita Regional Center for Support and Development of Democratic Changes in Orsha. On August 14, 2001, the Police confiscated four computers from the center, citing a Presidential Decree as justification. On August 17, 2001, the authorities returned and seized the center's risograph printing equipment. The equipment was subsequently confiscated by court decision. A still later court decision returned the risograph equipment, but the computers remain in Belarus' possession. Post has not reached a resolution on this issue with Belarus.

a. Claimant K (US Government)

b. February 2003

c. Claimant K provided US Government-owned risograph printing equipment worth \$6,735 to the Strike Committee of Outdoor Market Stall Operators. The Police seized the equipment on February 15, 2003, allegedly refusing to produce a warrant or give the Strike Committee a copy of the receipt confirming the seizure, as required under Belarusian law. The equipment has not been returned, nor has Post been able to secure compensation for the seized risograph.

a. Claimant L (US Government)

b. October 2002

c. Claimant L is the US Government's Army and Air Force Exchange Service (AAFES). Due to an administrative error, Customs documentation for an AAFES shipment bound for US troops in Afghanistan was incorrect. At the Belarusian border Customs officials inspected the shipment and noted the discrepancy. As a result, Belarusian Customs authorities seized government-owned cargo worth \$16,240. An October 29 court ruling formally expropriated the cargo.

The US Embassy formally protested the action twice in writing and on numerous occasions verbally, offering assurances that the goods were not for use in Belarus and were not intended for commercial purposes. AAFES has received no compensation for the confiscated property, nor has Belarus shown willingness to negotiate a resolution on the issue.

a. Claimant M (US Government)

b. March 2003

c. Claimant M loaned US Government-owned technical equipment to Belarusian television stations through an assistance program administered by the International Research and Exchanges Board (IREX). In March 2003 an oblast court in Gomel ruled that seven pieces of US Government-owned equipment provided through the IREX program should be expropriated. Although the US Government holds

title to the equipment, Embassy officials were not allowed to participate in court proceedings.

Following the seizure, the Embassy formally protested the court's ruling to the Ministry of Foreign Affairs (MFA), requesting that the equipment be returned to the US Government. The issue was a subject of frequent interventions with the MFA, including with the Foreign Minister. Belarus has shown no willingness to negotiate the return of the government-owned equipment.

a. Claimant N (US Government)

b. December 2004

c. Claimant N provided US Government-owned computer equipment and cell phones worth approximately \$10,000 to the NGO Business Initiative. Police and the BKGB seized the equipment in April 2004 when they arrested the head of the NGO. On December 30, 2004 a Minsk District Court judge

ruled the equipment should be returned to the Embassy. No equipment has been returned; it remains in BKGB custody.

FYI Only

- a. Claimant O
- b. January 2004

c. Claimant O is a US company registered in Wisconsin but based in Illinois that had a shipment of cars and limousines en route to Kazakhstan detained by Belarusian Customs. Initially, Belarusian Customs detained the shipment because they doubted the listed value of the cargo. They then extended the detention because they doubted the US corporation's registration status. Eventually, however, Customs discovered along with Interpol that the US company was involved in altering stolen vehicles in the U.S., and seized the goods as suspected stolen. While the US company initially sought US Government assistance, after the closure of Claimant O by Illinois police and the arrest of two employees, no further assistance was sought or provided. In October 2005, the Embassy raised with Belarusian Customs the possibility of returning the vehicles to their legal, original owners, but Customs showed no interest in cooperating.

Claimants

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Claimant A is Emerson Process Management, a US company based in St. Louis, MO. EPM has not signed a privacy waiver.

Claimant B is Cartwright Trading Ltd. Post does not know where Cartwright is registered, and Cartwright has not signed a privacy waiver.

Claimant C is American MOL Corporation. Post does not know where this company is registered, and American MOL has not signed a privacy waiver.

Claimant D is P.I.N. Trade International, Inc., a U.S. corporation registered in Brooklyn, New York. P.I.N. Trade International, Inc. has not signed a privacy waiver.

Claimant E is Calls Capital, LLC, a U.S. corporation registered in Oregon. Calls Capital, LLC has not signed a privacy waiver.

Claimant F is McDonald's Corporation, headquartered in Chicago, IL. McDonald's has not signed a privacy waiver.

Claimant G is Alliant Techsystems, a U.S. company headquartered in Edina, Minnesota. Post has no information that Alliant Techsystems signed a privacy waiver.

Claimant H is Printcorp, a U.S. corporation based in Dallas, Texas. Printcorp has not signed a privacy waiver.

Claimant O is Apollo Motors, a U.S. company registered in Wisconsin but based in Illinois. Apollo Motors has not signed a privacy waiver.

Claimants I, J, K, L, M and N are the U.S. Government.

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